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C O N T E N T S

| <u>WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RE CROSS</u> |
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| Joseph Bianchimano | | | | |
| By Mr. Kaplan | 437 | --- | --- | --- |
| By Mr. Bonney | | 461 | --- | --- |
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| John Fox | | | | |
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E X H I B I T S

| <u>NUMBER</u> | <u>FOR IDENTIFICATION</u> | <u>IN EVIDENCE</u> |
|---------------|---------------------------|--------------------|
| (None.) | | |

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE HERBERT SMOLEN: On the
3 record.

4 This is a further hearing in Docket A-110550F055.
5 Today's hearing has been designated for the presentation
6 of the balance of public witnesses.

7 Are there any preliminary matters?

8 MR. BONNEY: No, Your Honor.

9 MR. KAPLAN: No, Your Honor.

10 JUDGE SMOLEN: I have a preliminary matter which I
11 want to put on the record and then proceed with the
12 taking of testimony.

13 Protestants previously have filed a motion to
14 dismiss or in the alternative to expand the scope of this
15 proceeding. Both the Prosecutory Staff and PECO
16 respectively filed separate answers in opposition.

17 On consideration of these pleadings the motion will
18 be denied for the following reasons, among others:

19 One, the parameters of this proceeding have been
20 designated by the Commonwealth Court and the Commission's
21 order.

22 Two, to deny the application on the grounds cited
23 by the Protestants even if it were within the ALJ's
24 authority to do so, and this is questionable in light of
25 the Commission's prior approval, would be to prejudice the

1 issues in this case without having the benefit of all the
2 expert testimony and the briefs and arguments thereon to
3 be made by Counsel.

4 There are other reasons which will be set forth at
5 a later date, but the foregoing reasons alone are
6 sufficient to deny the motion at this time.

7 Having said that, we will proceed with the taking
8 of public testimony.

9 Mr. Kaplan.

10 MR. KAPLAN: May it please the Court, I would like
11 to call, first, Mr. Bianchimano.

12 Whereupon,

13 JOSEPH BIANCHIMANO

14 having been duly sworn, testified as follows:

15 JUDGE SMOLEN: State your full name and spell it
16 for the record and your home address.

17 THE WITNESS: My name is Joseph Bianchimano,
18 B-i-a-n-c-h-i-m-a-n-o. I live at 91 Bridgestone Drive,
19 Langhorne, Pennsylvania 19053.

20 JUDGE SMOLEN: Mr. Kaplan.

21 DIRECT EXAMINATION

22 BY MR. KAPLAN:

23 Q. How long have you lived at this address?

24 A. I have lived there for a total of 28 months.

25 Q. Are you married?

1 A. Yes.

2 Q. And do you have children?

3 A. Yes, I have two young children. I have a six
4 year old and a 12 month old child.

5 Q. And how close is your property to the proposed
6 line?

7 A. From the outer boundary of my property line I'm
8 50 feet from the powerline -- proposed powerline.

9 JUDGE SMOLEN: You are 50 feet from the line itself
10 or from the edge of the right-of-way?

11 THE WITNESS: From my property line to the actual
12 tower.

13 JUDGE SMOLEN: Go ahead.

14 BY MR. KAPLAN:

15 Q. How far is your actual house?

16 A. It's 75 feet.

17 Q. And can you also state your business, sir?

18 A. I am a realtor with Remax Realtors. I am the
19 broker/owner of that company.

20 Q. And what does that company do?

21 A. We sell predominantly residential real estate
22 in the tri-county area, Philadelphia, Bucks, Montgomery.
23 I have been actively trying to sell my own home --

24 MR. BONNEY: Objection, Your Honor. I think we are
25 getting again in the area of property values. If Mr.

1 Bianchimano is testifying as an expert or proposing to
2 testify as an expert with respect to that, I suggest that
3 the Protestants should have filed prefiled written
4 testimony. And if he is testifying as a resident with
5 respect to property values or the value of his home or
6 the ability to sell it with respect to this line I think
7 it is outside the scope of this proceeding.

8 JUDGE SMOLEN: Go ahead.

9 MR. KAPLAN: Your Honor, I believe he should be
10 permitted to state the facts to what he is doing with his
11 residence. And to the extent he is an expert, that would
12 only be relevant to the Court's weighing of the facts
13 that he has stated and his efforts.

14 JUDGE SMOLEN: Let's hear the question again.

15 (Whereupon, the reporter read from the record as
16 requested.)

17 JUDGE SMOLEN: Let's take the next question. Let's
18 see what the next question is.

19 BY MR. KAPLAN:

20 Q. And have you been successful in those efforts?

21 A. I have not been successful, nor has anyone on
22 my street been successful.

23 JUDGE SMOLEN: Well, just testify as to yourself.

24 A. No.

25 BY MR. KAPLAN:

1 Q. Why are you trying to sell your home?

2 A. I have two children. I have a 12 month old and
3 a six year old. Based on the literature that I have been
4 reading, including the EPA's current statement that these
5 high voltage lines may pose a possible carcinogenic risk,
6 I cannot take a chance. When my children 15 years from
7 now, 20 years from now, if they potentially develop a
8 problem, would you gentlemen be here to explain to them
9 what may have happened?

10 JUDGE SMOLEN: Why don't you just answer the
11 question. Instead of giving an argument, sir, because
12 the arguments are addressed to the Administrative Law
13 Judge --

14 THE WITNESS: Your Honor --

15 JUDGE SMOLEN: Just a moment. You will get a
16 chance to say.

17 It's nice to make public statements to Counsel who
18 are here, but you have Counsel of your own. Please
19 respond to his questions rather than posing questions of
20 your own.

21 A. I can't take the risk. Right now there seems
22 to be in my mind a preponderance that there is a risk. I
23 don't think any reasonable parent would put his child in
24 any sort of jeopardy. I don't have the right to do that.
25 I don't believe a company has the right to do that.

1 I seem to be slightly confused on an issue. When I
2 hear the name Public Utility Commission, the first word
3 that comes to my mind is public and then utility, and --

4 BY MR. KAPLAN:

5 Q. If you can, Mr. Bianchimano, let me continue
6 with the questions and then you can respond.

7 A. Okay.

8 Q. What has led you to believe that there is a
9 risk if they energize the powerline?

10 A. The studies that I have been reading,
11 predominantly, the Swedish studies. The EPA reports.
12 The current radio announcements that have been on
13 National Public Radio. The current seminars that are
14 being held in Washington, D. C. I mean, there is a stack
15 of information that I currently have.

16 When I sell property and I have a client who is
17 interested in purchasing a lot near a proposed
18 powerline --

19 MR. BONNEY: Objection, Your Honor.

20 JUDGE SMOLEN: He hasn't gotten into the valuation
21 of the property.

22 A. I carry a stack of information that I give to
23 them and I actually try to steer them away from that.

24 BY MR. KAPLAN:

25 Q. From what? I'm sorry.

1 A. From purchasing near a substation or a
2 powerline. I have a moral problem, especially if a
3 family has children, in selling an unit next to a
4 powerline. I can't do it. Knowing what I know, I have a
5 problem, that there may be a potential risk to that
6 family and to their children, not to mention to the -- I
7 don't know if I could say the property value. I can't do
8 it.

9 Q. So you would advise any prospective purchaser
10 of the home --

11 MR. BONNEY: Your Honor, he is leading the witness.

12 JUDGE SMOLEN: Right. This is direct examination.
13 No leading questions. Sustained.

14 BY MR. KAPLAN:

15 Q. Would you communicate this condition to any
16 prospective purchaser of your home?

17 MR. BONNEY: Your Honor, that is a leading question
18 as well.

19 JUDGE SMOLEN: Well, I am going to give some leeway
20 to Counsel here.

21 A. Repeat that again, Counsel.

22 BY MR. KAPLAN:

23 Q. Would you communicate the environmental
24 conditions, in particular the potential of energizing the
25 line to any prospective purchaser of your home?

1 A. I would communicate my concerns. I would give
2 them whatever information I have and I would let them
3 draw their own conclusions. Invariably their conclusions
4 always led to shopping elsewhere.

5 Q. Have prospective purchasers come to your home?

6 A. A few, yes.

7 Q. Do you have a for sale sign outside your home?

8 A. No, I do not.

9 Q. How have you advertised your home?

10 A. Through my office only, in-house.

11 Q. And have you advised process purchasers of
12 this condition?

13 A. I have made full disclosure of what is going
14 on.

15 Q. And what has been the responsive action?

16 A. Well, they have a group of questions pertaining
17 to why I am selling and why there are two other homes for
18 sale on my block. There are only 11 homes in my total
19 community. And they have only been built within the last
20 two years. And three of them are currently on the
21 market.

22 I am the president of the homeowners association
23 also. Many of the people in that development would like
24 to move but they are simply not in the position because
25 of the investment that they have made --

1 JUDGE SMOLEN: Well, I don't think you can testify
2 on behalf of the other people.

3 THE WITNESS: Okay.

4 BY MR. KAPLAN:

5 Q. Do the other homeowners who have their houses
6 for sale have for sale signs outside their house?

7 A. One other person does.

8 Q. What have the others done to your knowledge to
9 advertise their houses.

10 MR. BONNEY: Your Honor, I think you just indicated
11 that he can't testify with respect to the others.

12 JUDGE SMOLEN: The question was what have you done
13 in connection --

14 MR. KAPLAN: What has he seen.

15 A. The standard marketing procedure, advertising,
16 signs, Multiple Listing Services, things like that.

17 BY MR. KAPLAN:

18 Q. So the fact that these three other houses are
19 for sale has been communicated to the public to your
20 knowledge?

21 A. One person just left. He just walked out and
22 gave the property back to the bank. He just left. And
23 that particular house is going to be coming back on the
24 market, I guess. The bank must do something with it.
25 They can't afford to keep it vacant. He had three

1 children also.

2 Q. Have you taken any steps in your house to
3 prepare for this potential energizing of the powerline?

4 A. I feel that -- right now my children's rooms
5 face the powerline. I could set back their room by
6 putting them in the back room --

7 JUDGE SMOLEN: The question was have you taken any
8 action.

9 THE WITNESS: For example?

10 JUDGE SMOLEN: That was your Counsel's question.

11 BY MR. KAPLAN:

12 Q. Have you taken any actions to respond to the
13 potential energizing of the powerline with respect to
14 your house?

15 A. Have I done anything to lessen the risk?

16 Q. Correct.

17 A. There is really nothing I can do. I can't pick
18 up my house and move it, if that's what you mean.

19 Q. That was my next question. Is there anything
20 that you can do because of the closeness of the powerline
21 to lessen the risk?

22 A. There is nothing I can do unless I want to live
23 in the far reaches of my backyard in a tent. I can't
24 move my house. I have rental property but that would
25 mean leaving my home vacant. I have a mortgage. I have

1 to pay it. I can't rent my house because it is a 4,000
2 foot house. There is no market to renting a 4,000 square
3 foot house. An apartment, yes, but not a house. I am
4 basically stuck at this point.

5 Q. Has this potential energizing of the powerline
6 affected how you or your family presently live?

7 A. It certainly has.

8 Q. How?

9 A. Because of the literature that I have been
10 reading I have become more aware of E/MFs,
11 electro-magnetic fields. We have changed to a large
12 degree a lot of things in our daily lives. When the
13 microwave is on we stand away from it. I always ask my
14 children to sit back from the television. We have a
15 heating unit in our attic which my son slept under which
16 is electric. I moved him into another room. The problem
17 is that room faces the powerline. And I've got no other
18 place to put him. We practice avoidance. We don't use
19 electric blankets. I have moved my clock over to the
20 far bureau. I am just conscious about these things. I
21 don't think I am ridiculous about doing these things. I
22 am just changing my pattern of living.

23 Q. How old --

24 A. That has not affected me adversely. But these
25 are things that I can do. The powerline is a situation

1 where I have no control. I am stuck here. I can't move
2 my house.

3 Q. How old are your children?

4 A. I have a 12 month old and I have a six year
5 old. My wife just had a cancer operation in May of '91.
6 She has got a family history and I am just concerned that
7 in the event she is susceptible to that, and the report,
8 by the way, by the EPA has stated that children are more
9 susceptible to --

10 MR. BONNEY: Objection, Your Honor, with respect to
11 what the report says.

12 JUDGE SMOLEN: I am going to sustain that. We have
13 expert testimony on whatever effects there are, if indeed
14 there are any.

15 BY MR. KAPLAN:

16 Q. If the powerline is energized do you believe
17 you will be able to control where your young children
18 play as they grow up to keep them away from the line?

19 A. That is the added difficulty. Our backyard,
20 there is a creek there, it is all wooded, thorn bushes, a
21 lot of ticks, because of Lyme disease I don't let them
22 play in the back. It's just not a safe environment. All
23 the children play in the street and the powerline is
24 adjacent to the street -- parallel to it. This is where
25 they all play. It is a deadend street, it's not a

1 through street so it is safe to play. The only people
2 using that street are the 11 houses. It's like a
3 driveway.

4 There is an open area right next to the powerline.
5 The homeowners association was going to put a playground
6 there for them. There is the houses, the street and then
7 an open ground which is parallel to the powerline. This
8 is where we were going to put the playground. The
9 association has common interest in that parcel and we
10 were going to utilize it for a play area. But we have
11 decided that that is just not a smart thing to do at this
12 point.

13 Q. So that that playground --

14 A. Right.

15 Q. The play area, that ground, will not be usable
16 if they energize the powerline.

17 MR. BONNEY: Objection, Your Honor. He is leading
18 the witness.

19 A. We choose --

20 JUDGE SMOLEN: Just a minute. When we have an
21 objection you have to stop.

22 Do you want to be heard, Mr. Kaplan, on the
23 objection?

24 MR. KAPLAN: Yes, sir, I am asking him for his
25 conclusion.

1 JUDGE SMOLEN: You said usable. Now, that's --

2 MR. KAPLAN: As a playground for his children.

3 JUDGE SMOLEN: I understand. You said usable
4 rather than used.

5 MR. KAPLAN: Yes, sir. It's not being used right
6 now.

7 JUDGE SMOLEN: And the question is in the future
8 will it be used rather than will it be usable. That is
9 what I am talking about.

10 MR. BONNEY: I still think it is a leading
11 question, Your Honor. He is trying to put words in the
12 witness' mouth.

13 JUDGE SMOLEN: Well, it is a leading question, but
14 I am going to permit the leading question aspect of it if
15 you will modify that question, not a question of usable
16 but whether this witness knows whether it will be used in
17 the future.

18 MR. BONNEY: Your Honor, I would also object
19 because that is complete speculation on the witness'
20 part.

21 JUDGE SMOLEN: Well, let's see if he knows. He is
22 a member of the group. He said he is president or
23 chairman of the homeowners association. If you want to
24 go into it, you can.

25 BY MR. KAPLAN:

1 Q. First in your capacity as a resident and
2 individual homeowner, would you use that open land as a
3 playground for your children?

4 A. The ground has --

5 JUDGE SMOLEN: Why don't you answer the question
6 and then give an explanation.

7 A. Would I use it? If there were no powerlines,
8 certainly.

9 BY MR. KAPLAN:

10 Q. If the powerline is energized would you use it?

11 A. Absolutely not.

12 Q. Why?

13 A. For my concerns that I stated previously about
14 the electro-magnetic fields.

15 Q. As president of the homeowners association,
16 would the association develop that land as a playground
17 and play area if the line were not energized?

18 A. Yes.

19 Q. And how big is that area?

20 A. At one point where we were going to plays the
21 playground it's approximately, I would say, 100 feet wide
22 at one segment. It tapers into a large area and then
23 narrows to about 35 feet.

24 Q. If it appears that the powerline were going to
25 be energized, would the association invest the funds to

1 develop that area into a playground or play area?

2 A. If the powerline were energized not only would
3 we not put a playground up, but the bulk of us would try
4 to move.

5 MR. BONNEY: Objection, Your Honor.

6 JUDGE SMOLEN: You see, you have to confine
7 yourself to the questions.

8 THE WITNESS: All right.

9 BY MR. KAPLAN:

10 Q. If it appears that the powerline is going to be
11 energized, would the association invest the money and the
12 time to develop that play area as a playground?

13 A. No.

14 Q. And where would the children, in particular
15 your children and the other children that you know of in
16 the area, play if this play area is not --

17 A. And the line is energized?

18 Q. If the play area is not developed because of
19 your conclusion that the line will be energized, where
20 will they play?

21 A. That would be a moot point because I would not
22 be there. I would leave the development.

23 Q. If you did not leave where would your children
24 play?

25 MR. BONNEY: Your Honor, that is speculation on two

1 counts.

2 JUDGE SMOLEN: Well, I think it is speculation.
3 You might ask what areas are available for children to
4 play.

5 THE WITNESS: Is that the question?

6 JUDGE SMOLEN: No. You have a lawyer.

7 BY MR. KAPLAN:

8 Q. What areas would be available for your children
9 to play in if they could not play in the area play
10 fields?

11 A.. I could drive them to a safe place. But, once
12 again, Counsel, I would not be living in that development
13 if that line were energized. They would be playing in a
14 safe place. I would move. Regardless of whether my
15 house was sold or not, I would have to leave.

16 Q. And your house would remain vacant analogous to
17 the houses along the Love Canal or something like that?

18 MR. BONNEY: Objection, Your Honor.

19 JUDGE SMOLEN: Sustained.

20 BY MR. KAPLAN:

21 Q. If you were to sell your house now without any
22 powerline being energized or any possibility of the
23 powerline being energized, as a homeowner do you have any
24 approximation of what your home would be selling for,
25 what you would sell your home for?

1 MR. BONNEY: Objection, Your Honor. It goes to
2 property value.

3 JUDGE SMOLEN: I am going to sustain that. It goes
4 to property value. It's not an issue in this case.

5 BY MR. KAPLAN:

6 Q. When were you advised of the intention to
7 energize the powerline?

8 A. I received -- well, I noticed -- excuse me -- I
9 saw it posted on a pole. They didn't even have a name at
10 the time. It was not even PAUSE. A general meeting was
11 being held at the town hall for everyone to attend. I
12 immediately told all the neighbors in our development
13 about this posting that I saw and we went to this
14 meeting.

15 It was the first time that I learned that there was
16 a proposed powerline that was going to go up. And I
17 think at that time they had already received approval
18 from the PUC to put the powerline up, which surprised me
19 because I had submitted for approval to the PUC for a
20 limousine service. It took me two years. Here I saw a
21 sign posted and within a very short period of time they
22 had already received approval for such a major project.
23 I could not believe that it was -- it sounded like it was
24 almost a done deal.

25 Q. Did you receive any written notice at any time

1 of the intention to energize the line?

2 A. No. Absolutely not.

3 Q. Were the houses on your street for sale prior
4 to the understanding that the line was going to be
5 energized?

6 A. No.

7 MR. BONNEY: Objection, Your Honor. He does not
8 know whether the houses were for sale or not. He can
9 only testify as to whether there was a sign posted.

10 MR. KAPLAN: Your Honor, he stated that he receives
11 Multiple Listing Service publications.

12 JUDGE SMOLEN: Let's find out.

13 A. Also I am president of the homeowners
14 association.

15 JUDGE SMOLEN: Just a minute. Let's find out. Get
16 the background.

17 BY MR. KAPLAN:

18 Q. You stated that you're the president of the
19 homeowners association?

20 A. Is that right.

21 Q. And you stated that the homeowners association
22 includes the homeowners that have their houses for sale?

23 A. It's a very small community. There are only 11
24 houses there.

25 Q. In your capacity as a real estate salesman and

1 manager do you see the Multiple Listing Service?

2 A. Yes. Constantly.

3 Q. And from that would you be able to determine
4 whether or not their houses are for sale?

5 A. Sure. I would say 50 percent of the houses on
6 the market approximately don't have signs up. And yet I
7 know they are for sale.

8 MR. KAPLAN: If the Court permit it --

9 JUDGE SMOLEN: Go ahead.

10 BY MR. KAPLAN:

11 Q. To your knowledge, were the houses in your area
12 for sale prior to the date that the community was advised
13 of the intent to energize?

14 A. No, they were not.

15 Q. Are you relatively sure of that?

16 A. Yes.

17 Q. If there were no intent to energize, would your
18 house be for sale?

19 A. I love the development that I live --

20 JUDGE SMOLEN: Why don't you answer first so we
21 have a direct answer?

22 A. If the powerline was not going to go up, I
23 would remain.

24 BY MR. KAPLAN:

25 Q. Why?

1 A. I spent a lot of money. This is my dream
2 house. This is what I have worked 40 years for. This is
3 what I have always wanted. And now that I have it, it's
4 dashed away by a powerline that I have absolutely no
5 control over.

6 Q. How much have you spent on your house,
7 including the cost to initially purchase it?

8 MR. BONNEY: Objection, relevance.

9 MR. KAPLAN: Your Honor, the witness stated that he
10 would be vacating the house if the line is energized, and
11 I would like the record to indicate the degree of his
12 fear in terms of what he would be giving up and in terms
13 of his concerns about the harm. And I think, therefore,
14 it is relevant as an indication of his willingness to do
15 anything to --

16 JUDGE SMOLEN: I'll permit the question.

17 A. Prior to --

18 JUDGE SMOLEN: Answer the question first and then
19 give an explanation.

20 A. Prior to the powerline going up, I had invested
21 in irrigation systems, landscaping, a deck. When I
22 learned that the powerline was going to go up I stopped
23 everything. My future projects were to finish the
24 basement. I was going to put a pool in the back yard.
25 There has to be concrete work in the back. There is

1 still a lot to be done.

2 JUDGE SMOLEN: That wasn't the question. Pay
3 attention to the question, please, and then answer it.

4 BY MR. KAPLAN:

5 Q. Can you state to the Court what amounts of
6 money you have invested in your property to date,
7 including the house? And you can break that down by the
8 different areas that you have invested in.

9 A. 300,000 for the purchase of the house, 35,000
10 for improvements since the purchase.

11 Q. And the improvements include those items that
12 you just described?

13 A. Some. Yes. There are more. Some of the other
14 improvements were a built-in wall unit facing the
15 fireplace, ceramic tile floors. The deck, the deck is
16 about 900 square feet. It is a large deck. My
17 landscaping alone cost me \$12,000.

18 Q. And can you state to the court what the
19 dimensions or perimeter of your house and lot are -- the
20 lot, I should say.

21 A. Total acreage.

22 Q. Yes.

23 A. Approximately 2.2 acres. But the building
24 envelope is in the front where the powerline is because
25 the balance of that property is in a floodplain. The

1 township, therefore, requires that we build the
2 properties in a non-floodplain zone, which just happens
3 to be near the powerline.

4 Q. So that that is where the house is situated?

5 A. That's right.

6 Q. And would the floodplain requirements prohibit
7 you from building additions in the rear area of the
8 house?

9 A. Yes.

10 Q. What is the amount of the mortgage on your
11 house?

12 A. \$153,000.

13 (Pause.)

14 A. I have a substantial amount of equity in this
15 property.

16 (Pause.)

17 A. I would gladly sell the property for what I
18 paid for it.

19 MR. BONNEY: Objection, Your Honor. There is no
20 question pending.

21 JUDGE SMOLEN: There is no question before you.
22 Again, this is in the nature of public testimony, so we
23 are going to construe the rules a little more liberally
24 than we would in a normal evidentiary hearing.

25 You may proceed, Mr. Kaplan.

1 BY MR. KAPLAN:

2 Q. Are there any other conditions or harm that you
3 believe would affect you if the powerline were energized?

4 A. It would be extremely destabilizing. My child
5 right now is in a special education program in Council
6 Rock School District. I would have to move. However, I
7 can't stay in Northampton because most of my equity would
8 remain in the house. I can't take it with me. I would
9 have to move into an area, therefore, that is much
10 cheaper. I might have to rent an apartment. And I would
11 have to go, probably, back to Philadelphia. I am not
12 crazy about their school system, but it is safer, I
13 think, than living near a powerline. You see...

14 Q. You can answer.

15 A. I would like to sell the property but once
16 again there is a problem. When a family comes to look at
17 my house and they have children, there is a problem
18 there. Do I sell it to another family with children and
19 put them in the same predicament that I am in? It is an
20 untenable situation.

21 Q. And even without the powerline being energized,
22 have these factors affected you right now?

23 A. Sure. We are on hold. Most families have
24 plans, desires, dreams --

25 JUDGE SMOLEN: Please, keep on yourself, on your

1 own family, rather than discussing the population in
2 general.

3 THE WITNESS: My family has plans, desires, to
4 improve our home, to make it beautiful, to make it not
5 only a home but, you know, a playground for our children,
6 a vacation place where we can live. Certainly I did not
7 invest this kind of money to ultimately have to pick up
8 and move again. Everyone in this room, I am sure -- I --

9 JUDGE SMOLEN: You're learning. You learn every
10 day.

11 THE WITNESS: It's a learning experience.

12 Of course we have aspirations to create a home for
13 our family, for my family. Right now all my plans are on
14 hold. We are basically frozen in time here and not able
15 to decide what we are going to do. There is a financial
16 burden here. Do I just pick up and go? Do I rent? Do I
17 try to sell? Can I sell it to another family? It's a
18 bad situation.

19 BY MR. KAPLAN:

20 Q. In the concerns that you have, do they include
21 any potential noise created by the electricity flowing
22 through the lines or vibrations?

23 A. If it was only noise --

24 Q. Other than any electric fields. I'm sorry.

25 Now you can answer.

1 A. I can live with noise. I mean, we have a
2 railroad track that goes across the front of the house.
3 It's a freight line that travels periodically, not real
4 frequently. But I can practice avoidance with a freight
5 line. I can tell my children not to go near the freight
6 line. I can live with noise, I can shut my window. But
7 I can't stop E/MFs from coming through the wall. You
8 can't stop an electro-magnetic field. You bury it; it
9 still doesn't stop it. There is nothing I can do. Noise
10 I can live with. Turn up the TV. But I can't stop these
11 electro-magnetic fields. There is nothing I can do.

12 MR. KAPLAN: I have no further questions, Your
13 Honor.

14 JUDGE SMOLEN: Cross-examination.

15 MR. BONNEY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BONNEY:

18 Q. Good morning, Mr. Bianchimano.

19 You were just mentioning that there are freight
20 trains that travel by the front of your home?

21 A. Sure.

22 Q. How often do they go by?

23 A. When we first purchased the property I tried to
24 get a fix on how frequently they traveled. But it's an
25 erratic schedule. Sometimes you will get one, two trains

1 a week. Sometimes you will get five. There's really no
2 pattern.

3 Q. As I understand it, you are across the street
4 from the railroad tracks?

5 A. Exactly.

6 Q. Is your house set back about 25 feet from the
7 edge of your property, is that correct? Or is it
8 farther?

9 A. No, 75.

10 Q. Your house is set back 75 feet from the edge of
11 your property?

12 A. From the property line, which faces the
13 powerline.

14 Q. So your property does not abut the Conrail
15 right-of-way?

16 A. No. There is a street and then there is a
17 parcel of land, a small parcel of land, a strip, and then
18 the powerline.

19 Q. Is your home what they call an all electric
20 home?

21 A. Uh-huh. That's right. Heat pump. There is no
22 gas or -- my next project was to put an oil backup in as
23 part of the avoidance. But do I put an oil backup,
24 invest that money, if I am going to leave?

25 Q. Am I correct that you are not one of the named

1 Protestants in this matter?

2 A. What does that mean?

3 Q. To your knowledge has your name been identified
4 in any of the pleadings that have been filed with the
5 Commission?

6 A. I am not sure if it has or not. But I have
7 been with PAUSE and I have been working with the township
8 trying to solicit their aid in trying to form some sort
9 of --

10 Q. I'm sorry. All I asked you was whether you
11 were a named Protestant.

12 JUDGE SMOLEN: Well, let him finish his answer.

13 MR. BONNEY: Okay.

14 A. I have been working intermittently with PAUSE
15 as a liaison between Northampton township and PAUSE to
16 try to solicit any sort of aid, financial or support, in
17 trying to form some sort of code changes in notification
18 to the community for powerlines. I was involved in some
19 fundraising with PAUSE. I have been attending meetings
20 with PAUSE. I have been actively involved with PAUSE.

21 I have also acted as a liaison between PAUSE and my
22 community as the president of the homeowners association.

23 MR. BONNEY: I have no further questions, Your
24 Honor.

25 JUDGE SMOLEN: Ms. Khanwalkar.

CROSS-EXAMINATION

1
2 BY MS. KHANWALKAR:

3 Q. I'm sorry, I came in a little late and you
4 might have testified on this. I am trying to understand
5 how far the property -- how far your house is from the
6 powerline.

7 A. The actual building from the powerline?

8 Q. Right. You say you have a street and you have
9 a strip of land plus 75 feet back on the property?

10 A. Right. I would say a total of 125 feet from
11 the front of my door to the powerline.

12 Q. So that means -- how wide is the strip of land?

13 A. I am not sure. Between the street and the
14 powerline?

15 Q. Right.

16 A. I don't know. I have not measured the strip.
17 But I have measured from the end of my property line to
18 the powerline.

19 Q. So you would not know how wide the street is,
20 either, there?

21 A. I could not give you accurate measurements of
22 the street. It's my house, my property, the street, that
23 small strip -- it's like a medial strip, almost -- and
24 the powerline.

25 MS. KHANWALKAR: Thank you.

1 JUDGE SMOLEN: Ms. Burket.

2 MS. BURKET: Yes.

3 CROSS-EXAMINATION

4 BY MS. BURKET:

5 Q. You mentioned that your wife had a cancer
6 operation in 1991. And I just --

7 A. May.

8 Q. I'm sorry to hear about that. I just wondered,
9 did she receive any follow-up treatment? Was there
10 anything other than the operation?

11 A. No. They -- I hope -- they claim that they got
12 everything that they wanted to get.

13 The follow-up treatment is basically mammograms,
14 testing, preventative things like that.

15 MS. BURKET: That's all I wanted to know. Thank
16 you very much.

17 JUDGE SMOLEN: Ms. McCloskey.

18 MS. McCLOSKEY: I have no questions, Your Honor.

19 JUDGE SMOLEN: Any redirect?

20 MR. KAPLAN: No, Your Honor.

21 JUDGE SMOLEN: The witness is excused. Thank you
22 very much for appearing and testifying.

23 (Witness excused.)

24 MR. KAPLAN: I would like to call Mr. John Fox.
25 Whereupon,

1 JOHN FOX

2 having duly affirmed, testified as follows:

3 JUDGE SMOLEN: State your full name and residence
4 address.

5 THE WITNESS: My name is John Fox. I live at 17
6 Wychewood Lane, in Langhorne, Pennsylvania.

7 JUDGE SMOLEN: Mr. Kaplan.

8 DIRECT EXAMINATION

9 BY MR. KAPLAN:

10 Q. Can you state the total acreage covered by your
11 property?

12 A. I think it is eight-tenths of an acre. Almost
13 an acre.

14 Q. And how far is your property line from the
15 proposed energized powerline?

16 A. One corner of my property line, I would
17 estimate, comes within 60 or 70 feet of the powerline
18 itself.

19 JUDGE SMOLEN: Let me interrupt. When you say a
20 corner of your property, do you mean a corner of the
21 actual structure or a corner of the --

22 THE WITNESS: Of the land.

23 BY MR. KAPLAN:

24 Q. How far is your actual house from the proposed
25 powerline?

1 A. I would estimate 170 to 190 feet, somewhere in
2 that range.

3 Q. And are you married?

4 A. Yes.

5 Q. Your wife lives with you?

6 A. Yes.

7 Q. Do you have children?

8 A. Two children.

9 Q. How old, please?

10 A. A ten year old boy and a six year old girl.

11 Q. And can you control where they will be -- where
12 they play at this time?

13 A. Hopefully. When we bought this house one of
14 the main considerations between my wife and myself was
15 whether we should buy a house close to a railroad track.
16 We made the determination that we probably could control
17 our children well enough to reduce the risk of an
18 accident on the tracks. We can exercise that control
19 over our children.

20 One of the things that is disagreeable to me about
21 this powerline is that there is a risk factor here that I
22 am not allowed to control. I can control my children, I
23 think.

24 Q. And the risk factor you cannot control is what,
25 please?

1 A. Is the E/MF transmission from the powerline.

2 Q. And in your house, where are your children's
3 bedrooms located?

4 A. They are at the closest point to the powerline.
5 That side of the house is where the children's bedrooms
6 are.

7 Q. And if the powerline is energized, is there
8 anything you could do with respect to relocating your
9 children's bedrooms?

10 A. Yes. I can buy a different house, which is
11 probably what I will be forced in a position to consider.
12 I will probably do that. There is nothing I can do in my
13 current house, no.

14 Q. Is your house presently for sale?

15 A. It's not presently for sale. It will be if the
16 powerline is energized.

17 Incidentally, we did -- we live in what turns out to
18 be a nice neighborhood in our town and several months ago
19 a real estate agent called us up and said they had a
20 buyer who wanted to buy a house in our neighborhood and
21 since this powerline was going through he said -- we
22 signed an agreement to let that person come through our
23 house. Had they decided to buy we would have sold it.

24 That person was a science teacher in the Neshaminy
25 School District. He waited to hear the outcome of the

1 first and second PAUSE hearings in Harrisburg. The
2 second time we were turned down for a public hearing, he
3 called the real estate agent and said I don't want to be
4 near a powerline, I have read too much about it, and he
5 no longer pursued buying the house. We would sell the
6 house.

7 Q. Where do your children play now when they play
8 outside?

9 A. Throughout the neighborhood, including the
10 backyard, which is the wooded area, which would include
11 the piece that runs by the powerline. They play with our
12 neighbors who do live at varying distances from the
13 powerline.

14 (Pause.)

15 A. They also play in their bedrooms.

16 Q. How has the announcement of the intention to
17 energize the powerline affected you and your family's
18 lifes to date?

19 A. There was no announcement. Landscapers were
20 removing trees near my home, along the railroad tracks.
21 I spoke to neighbors. Some of them had found out that a
22 powerline was going through. I call that a conversation,
23 not announcement.

24 One of the things that upsets me about this whole
25 situation is the callous nature that people were treated

1 in terms of a year just to get a hearing to talk to the
2 company about the powerline that they are putting in my
3 backyard at a cost of thousands of dollars of personal
4 expense. That upsets me. There was no announcement, as
5 far as I am concerned.

6 I guess about a year-and-a-half ago, or a year --
7 in the nature of a year ago I found out there was going
8 to be a powerline run parallel or next to my property.

9 Q. And how has that information affected the
10 present quality of you and your family's lives?

11 A. It has me on a slow track to organize the home
12 so I can sell it. It has me very nervous. And the
13 knowledge that I have gained -- the powerline itself
14 never bothered me. It was when I started learning about
15 the health risks associated with powerlines, which was
16 new information to me. Had there been no health risk
17 associated with it, the physical appearance of the
18 powerline is not a critical factor. It's not
19 particularly upsetting to me. In fact, the poles for the
20 powerline for the new powerline that is going through
21 were in existence. They were not being used. But mostly
22 it's the education that I have received after hearing
23 various reports about health risk from the line that have
24 changed the way I approach electricity in my home and the
25 way -- and my degree of acceptance of this line coming

1 through.

2 Q. What changes have you made in your lifestyle in
3 your home since you became aware of the intention to
4 energize the line?

5 A. We have moved clocks, we have reduced the use
6 of the microwave, we stand back from the microwave, and
7 we have joined an organization that would -- we have
8 exercised what is sometimes described as prudent
9 avoidance. We have joined an organization in order to
10 mitigate those transmissions that might come from the
11 powerline into my home.

12 Q. And what have you -- you stated that you
13 learned about the harm. What is it that you have been
14 informed as to the consequences of energizing the
15 powerline?

16 A. I have learned that there are studies that
17 prove that there are cluster groups of increased
18 incidence of cancer, leukemia in children, brain cancer,
19 other health risks other than cancer. I have learned
20 that there is an absolute biological connection between
21 electro-magnetic fields and the human cell and the way
22 the cell operates, especially risky when young children's
23 cells are developing rapidly and being affected by those
24 electro-magnetic fields. From everything I learned in
25 general science in high school, for the next ten years my

1 kids will be replacing their bodies every seven years.
2 Every cell in that body will be replaced. That is rapid
3 cell growth. There is great concern that the effects of
4 this powerline can be harmful to that growth process.

5 Q. Do your concerns also relate to you and your
6 wife?

7 A. In terms of changing the way we operate in the
8 home, yes.

9 Q. Can you state to the Court, please, the amount
10 of money you have invested in your property?

11 A. \$210,000 in the house and I would say 20 to
12 30,000 dollars since the purchase of the house.

13 Q. Is there a mortgage on your house?

14 A. Yes.

15 Q. And how much is that?

16 A. Currently just under \$90,000.

17 Q. If the line were energized would you leave the
18 residence whether or not you are able to sell it?

19 A. I don't know. I have always assumed I would be
20 able to sell it. Do I have to answer that? I haven't
21 really thought that out.

22 Q. Answer that to the best of your present ability
23 and as honestly that you can tell the Court.

24 A. I really have not -- I don't know if I would
25 abandon the property. I guess if I couldn't sell it in

1 two or three years I would have to face a prospect like
2 that.

3 Q. I forgot to ask you, can you state your present
4 employment?

5 A. I'm a data processing consultant.

6 Q. And can you state your background or training
7 to be a data processing consultant?

8 A. A bachelors degree in history, a bunch of night
9 courses in computers and a lot of hard work.

10 (Pause.)

11 A. Incidentally, on the topic of changing lifestyle,
12 I have moved my head back from my terminal when I have to
13 work at the terminals. The terminals are also --
14 computer terminals are also considered a risk factors.
15 And I try to use a terminal with one of these little
16 shields on the front whenever I can.

17 Q. Are you familiar with the proposed play area
18 that the homeowners association was contemplating
19 developing?

20 A. No.

21 JUDGE SMOLEN: Wait just a minute, please. You
22 don't communicate with the witness when he is on the
23 stand. I understand the concern of all the parties, on
24 the witness stand as well as in the audience, but we have
25 to follow certain rules and that is the rule.

1 Let's go ahead, Mr. Kaplan.

2 BY MR. KAPLAN:

3 Q. You don't live -- do you live in the same
4 development that Mr. Bianchimano lives in?

5 A. No.

6 MR. KAPLAN: I have no further questions, Your
7 Honor.

8 JUDGE SMOLEN: Cross-examine.

9 MR. BONNEY: Thank you, Your Honor.

10 We have no cross-examination.

11 JUDGE SMOLEN: Ms. Khanwalkar.

12 MS. KHANWALKAR: No questions, Your Honor.

13 MS. BURKET: No questions, Your Honor.

14 MS. McCLOSKEY: I have no questions, Your Honor.

15 JUDGE SMOLEN: The witness is excused. Thank you
16 very much for appearing and testifying, sir.

17 (Witness excused.)

18 MR. KAPLAN: Mr. Joseph Kelly.

19 Whereupon,

20 JOSEPH KELLY

21 having been duly sworn, testified as follows:

22 JUDGE SMOLEN: State your full name and address.

23 THE WITNESS: My name is Joseph Kelly. I live at
24 3904 Warfield Drive in Huntingdon Valley.

25

DIRECT EXAMINATION

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BY MR. KAPLAN:

Q. Can you state your business address?

A. My business address is 206 Holland Road in Holland.

Q. And how does the business address relate to the proposed energized powerline?

A. My business address is approximately 500 feet removed from the powerline.

JUDGE SMOLEN: You own that property where your business is?

THE WITNESS: I lease it.

JUDGE SMOLEN: Go ahead.

BY MR. KAPLAN:

Q. Who works, in terms of the number of people, how many people work in your business?

A. We have about six full-time people.

Q. And how many men?

A. About three men and three women.

Q. And what kind of business is it?

A. It's a real estate business, real estate sales and management.

Q. And how long have you been there?

A. I have been there going on seven years now, in that location.

1 Q. And when did you learn of the proposal to
2 energize the powerline?

3 A. I learned early on, about a year-and-a-half ago
4 approximately.

5 Q. And how did you learn about it?

6 A. I learned about it through my associations with
7 people who I was friendly with.

8 Q. And has the intention to energize the powerline
9 affected how you operate or transact business in your
10 office?

11 A. Somewhat. In using the computer terminal, you
12 know, we do stay away, we back off at least three to four
13 feet. We try to stay three or four feet away when we use
14 it.

15 Q. And what will you do as best you can presently
16 determine if the powerline is energized?

17 A. What will I do?

18 Q. What will you do as chief executive of your
19 business?

20 A. Well, I would strongly consider relocating my
21 business, although that would not be to my advantage
22 because my location is a prime location right now. I am
23 known to be in that location. But I would strongly
24 consider relocating my business.

25 Q. Why would you consider that?

1 A. Well, you know, I really don't want to be
2 located in close proximity to a powerline that is not
3 advantageous to my overall health.

4 Q. Have your employees indicated to you similar
5 concerns?

6 A. Yes, they have.

7 Q. Have they given any indication or do you have
8 any belief as their manager as to whether they would
9 remain with you if the powerline were energized?

10 A. I think we would address that if it were
11 energized. I don't know what they would do, certainly,
12 but we would certainly discuss the energizing the
13 powerline and what we would do about it as a group, I
14 guess.

15 Q. Have they discussed it with you?

16 A. It really has not been a prime topic of
17 conversation. Very little discussion. There has been
18 some but very little.

19 Q. Have you been involved in any of the offers to
20 sell homes along the powerline or projected energized
21 powerline?

22 A. I had a house for sale that abuts the powerline
23 for approximately a year-and-a-half now, approximately
24 that long.

25 Q. When you have houses for sale --

1 JUDGE SMOLEN: He said he had only one.

2 MR. KAPLAN: This is a general question first.

3 JUDGE SMOLEN: Let's hear it.

4 BY MR. KAPLAN:

5 Q. When you have houses for sale, do you advise
6 prospective purchasers of environmental conditions?

7 A. I have discussed this with other people in my
8 field and their feeling is that if indeed the powerline
9 is up and visible, to talk about it would be -- if it is
10 visible and open and hostile or whatever you want to call
11 it, then the revelation of me telling somebody about it
12 would not be necessary. But if it is not there and it
13 was proposed, okay, I would be obligated to tell them
14 that, you know, it's there, it's coming.

15 Q. Do you believe that that discussion or advice
16 would make the house less salable?

17 MR. BONNEY: Objection, Your Honor. That goes to
18 property values. It is also speculation.

19 MR. KAPLAN: He is an expert.

20 MR. BONNEY: Your Honor, if he is testifying as an
21 expert on real estate values, again, I would object.

22 JUDGE SMOLEN: I am going to sustain the objection.
23 You can argue whatever you want on brief. And the point
24 has been made before.

25 MR. KAPLAN: Yes, Your Honor.

1 JUDGE SMOLEN: So the record is not diminished by
2 my sustaining this objection.

3 Go ahead.

4 BY MR. KAPLAN:

5 Q. Are you aware that there are a number of houses
6 on the market in addition to the one -- in that
7 development, in addition to the one that you are
8 presently trying to sell?

9 A. I am aware there are other houses on the market
10 that are adjacent or abutting the proposed powerline,
11 yes.

12 Q. And do you know whether they have been on the
13 market for a considerable period of time?

14 A. Yes. They have been on the market for a
15 considerable period of time, in this market.

16 Q. And how long would that be?

17 A. Oh, the one I presently have for sale has been
18 on the market for a year-and-a-half. And there are
19 others that have been on the market approximately six to
20 nine months that I know about.

21 MR. KAPLAN: I have no further questions, Your
22 Honor.

23 JUDGE SMOLEN: Cross-examination.

24 MR. BONNEY: Thank you, Your Honor.

25

CROSS-EXAMINATION

1
2 BY MR. BONNEY:

3 Q. Good morning, Mr. Kelly.

4 A. Good morning.

5 Q. Are you aware of any houses that are not near
6 this proposed line that have been on the market for six
7 to nine months?

8 A. Sure.

9 Q. How about for a year-and-a-half?

10 A. There aren't an awful lot of houses that have
11 been on the market for a year-and-a-half. There probably
12 are some.

13 MR. BONNEY: That is all I have, Your Honor.

14 JUDGE SMOLEN: Ms. Khanwalkar.

15 MS. KHANWALKAR: I have nothing, Your Honor.

16 JUDGE SMOLEN: Ms. Burket.

CROSS-EXAMINATION

17
18 BY MS. BURKET:

19 Q. I was wondering, on average, how much time do
20 you spend in your office?

21 A. Who, me?

22 Q. Yes.

23 A. Probably about -- in my office...

24 Q. Per day.

25 A. Per day? About 10 to 12 hours a day.

1 Q. Are other employees in the office quite that
2 often?

3 A. No. I don't think they are in the office that
4 often.

5 Q. On average how long are they in the office? I
6 assume they are real estate agents.

7 A. Yes. About half that. About half the time
8 that I am there.

9 MS. BURKET: That's all the questions I have.
10 Thank you.

11 JUDGE SMOLEN: Ms. McCloskey.

12 MS. McCLOSKEY: Thank you, Your Honor. I have no
13 questions.

14 JUDGE SMOLEN: Any redirect?

15 MR. KAPLAN: No, Your Honor.

16 JUDGE SMOLEN: Thank you very much, sir, for
17 appearing and testifying.

18 (Witness excused.)

19 MR. KAPLAN: Mr. Michael Lawler, please.

20 Whereupon,

21 MICHAEL LAWLER

22 having been duly sworn, testified as follows:

23 JUDGE SMOLEN: State your full name and address.

24 THE WITNESS: Michael Lawler, L-a-w-l-e-r, 1513
25 Grace Circle, Feasterville, Pennsylvania.

1 JUDGE SMOLEN: Mr. Kaplan.

2 DIRECT EXAMINATION

3 BY MR. KAPLAN:

4 Q. Are you married, Mr. Lawler?

5 A. Yes.

6 Q. And your wife lives with you?

7 A. Yes.

8 Q. And do you have children?

9 A. Three children.

10 Q. Their ages, please?

11 A. The ages are 21, 17 and 13.

12 Q. And can you state the total acreage covered by
13 your property?

14 A. I would say a half-acre.

15 Q. And from the perimeter of that half-acre how
16 close are you to the proposed energized powerline?

17 A. Seventy feet.

18 Q. And from the edge of your house how far are you
19 away?

20 A. Ninety feet.

21 Q. When did you first learn of the intention to
22 energize the powerline?

23 A. It was brought to my attention by Dot English.

24 JUDGE SMOLEN: By who? I didn't hear.

25 THE WITNESS: It was brought to my attention by Dot

1 English.

2 JUDGE SMOLEN: Okay.

3 THE WITNESS: Who came to my home and asked me if I
4 was aware that they were putting up a powerline, and I
5 said no.

6 BY MR. KAPLAN:

7 Q. When was that?

8 A. I guess about a year ago.

9 Q. And could you please advise the Court how much
10 money you have invested in your property?

11 A. The house cost me 80,000 and I have put about
12 \$4,000 into it.

13 Q. You have a mortgage on the house?

14 A. Yes.

15 Q. How much, please?

16 A. About \$78,000.

17 Q. Is your house presently for sale?

18 A. Yes, it is.

19 Q. How long has it been for sale?

20 A. It has been for sale for three months.

21 Q. Why did you and your wife put it up for sale?

22 A. We are very scared ever since it has been
23 brought out about the E/MFs. We have watched -- it has
24 been on television, on the newspaper coverage, various
25 magazine articles we have read. And we are very scared

1 because we have three children. They are our biggest
2 investment.

3 Q. And is there any agreement to sell outstanding?

4 A. Pardon me?

5 Q. Is there any agreement to sell your house
6 outstanding? Have you entered into an agreement with
7 anybody to sell your house?

8 A. No. No one has made an offer.

9 Q. Since you first learned of the intention to
10 energize the powerline, have you made changes in your
11 lifestyle and has your family made changes in its
12 lifestyle?

13 A. Yes. We started reading material on the
14 electric blankets. We stopped using that. We have a
15 microwave. I don't allow my children to use it.
16 Whenever me and my wife use it, we walk away when it is
17 running. And we also have an electric stove. My wife
18 will put something on the stove and then she will stay
19 clear of it.

20 Q. Where do your children play to the extent they
21 do play outside?

22 A. Okay. I have a back yard. They play ball in
23 the back yard. This runs parallel to the line. And also
24 we have a cul-de-sac in front of our house and I have a
25 basketball pole there. Not only my children but all the

1 children in our development, which is come comprised of
2 25 homes, they use that cul-de-sac as a playground. They
3 play ball, they ride their bikes and they roller skate in
4 that circle. And that is only 70 feet from the line.

5 Q. If the line is energized, would you permit your
6 children to play where they have been playing in the
7 past?

8 A. No. I would have to -- if I can't sell my
9 house for the time being I would have to take them
10 elsewhere to play.

11 JUDGE SMOLEN: You have a 21 year old -- one of
12 your children is 21 years old?

13 THE WITNESS: Yes.

14 JUDGE SMOLEN: Resides with you?

15 THE WITNESS: Presently right now he is away at
16 college. But when he comes home, him and his friends
17 play basketball in front of my home.

18 JUDGE SMOLEN: All right.

19 BY MR. KAPLAN:

20 Q. And you have two other children?

21 A. Yes.

22 Q. If the powerline is energized what changes will
23 that make in your lifestyle?

24 A. Well, number one, it will scare me to death.
25 We would have to try to get out some way or another.

1 Financially it is going to hurt me because presently
2 right now, besides my son going to college I have my wife
3 going and my daughter, she is going to be going. So
4 financially this is really going to hurt me.

5 Q. How will it change how you live?

6 A. I don't know how I am going to get my children
7 -- you know, my children won't be able to play outside,
8 especially my youngest daughter. I won't allow her to
9 play outside. I will have to take her somewhere else.

10 Q. Is your wife concerned about the intention to
11 energize the powerline?

12 A. Yes. She previously testified at this hearing.
13 She is a nurse and she is aware of children with
14 leukemia. She has seen it, I have seen it. That is not
15 a thing a parent would like to see.

16 Q. Have you discussed this intention with your
17 wife to energize the powerline?

18 A. Yes. She is very upset about having to move.
19 She loves the house. She loves the neighborhood. The
20 neighborhood is filled with lots of younger children. It
21 is a very nice development.

22 MR. KAPLAN: I have no further questions, sir.

23 MR. BONNEY: No cross, Your Honor.

24 JUDGE SMOLEN: Ms. Khanwalkar.

25 MS. KHANWALKAR: No cross, Your Honor.

1 JUDGE SMOLEN: Ms. Burket.

2 MS. BURKET: No questions, Your Honor.

3 JUDGE SMOLEN: Ms. McCloskey.

4 MS. McCLOSKEY: No questions, Your Honor.

5 JUDGE SMOLEN: Then the witness is excused. Thank
6 you very much for appearing and testifying.

7 (Witness excused.)

8 MR. KAPLAN: May it please the Court, I would like
9 to call Elaine Kupcinski.

10 JUDGE SMOLEN: Before we swear in the witness let's
11 take a five minute break for the reporter's convenience.

12 (Recess.)

13 JUDGE SMOLEN: Back on the record.

14 Whereupon,

15 ELAINE KUPCINSKI

16 having been duly sworn, testified as follows:

17 JUDGE SMOLEN: State your full name and address.

18 THE WITNESS: My name is Elaine Kupcinski,
19 K-u-p-c-i-n-s-k-i. I live at 1508 Grace Circle,
20 Feasterville, Pennsylvania 19053.

21 JUDGE SMOLEN: Mr. Kaplan.

22 DIRECT EXAMINATION

23 BY MR. KAPLAN:

24 Q. Are you married?

25 A. Yes, I am.

1 Q. Does your husband live with you?

2 A. Yes, he does.

3 Q. Do you have children?

4 A. I have three daughters.

5 Q. Their ages, please?

6 A. I have twins that are 12 and a 14 year old.

7 Q. And what is the acreage covered by your
8 property?

9 A. One-half acre.

10 Q. And how far is it from your property line to
11 the proposed energized powerline?

12 A. The property line is 70 feet, around 70 feet.

13 Q. From the powerline?

14 A. From the powerline, yes.

15 Q. And how far is your residence, the actual
16 house, from the powerline?

17 A. Approximately 90 feet.

18 Q. And when did you first learn of the proposal to
19 energize the powerline?

20 A. Mike Lawler came over to my husband shortly
21 after Dot and Frank English alerted him to the fact that
22 they were putting up the powerlines.

23 Q. About when was that?

24 A. About a year -- a little over a year ago.

25 Q. Did you ever receive any notice --

1 A. None.

2 Q. -- of any intention?

3 A. No.

4 Q. And where do your children presently play?

5 A. They play in our back yard, which is parallel,
6 I guess you would say, to the powerline and also in the
7 cul-de-sac, the end of the cul-de-sac right across the
8 street.

9 Q. If the powerline were energized, where would
10 they play?

11 A. I would not allow them to play there. They
12 would have to go elsewhere.

13 Q. Has the announcement of the intention to
14 energize the powerline caused any changes in your present
15 living style?

16 A. Yes, very much so. Since I have heard and read
17 a lot of information regarding the E/MF factor and the
18 risk involved I have changed my lifestyle and my
19 children's lifestyle to practice prudent avoidance around
20 my home and in my workplace, such as moving electrical
21 clocks away from the bed, when you use a microwave or an
22 electric dishwasher you are out of the room once it is
23 put on. I have gas and electric in my house so I don't
24 have a lot of electrical appliances such as -- I have a
25 gas-run washer and dryer, things of that nature.

1 Q. If the powerline were energized, how would that
2 change your life as best you can project?

3 A. Well, I would have to move. I don't think I
4 could stay there because I feel I am writing my
5 children's death warrant if I stay there. I have a
6 family history from both my husband's and my side with
7 cancer, you know, genetic cancer, I guess you would call
8 it. I have a maternal aunt that died from breast cancer
9 that went into the lymph nodes. My husband's family also
10 has relatives, maternal relatives of his, that have also
11 died from cancer. And from reading all the information
12 and literature that has been available to us through
13 PAUSE, after reading all this information I can't in good
14 conscience stay in a home where I feel I am going to be
15 jeopardizing myself and my children.

16 Q. What have you invested, you and your husband,
17 in your property?

18 A. Such as my property value?

19 Q. No. The amount of money you have spent to
20 purchase your property and the amount of money you have
21 put into your property.

22 A. We purchased the house for 80 --

23 Q. \$80,000?

24 A. 80,000. Right. After three years of living
25 there we refinanced it to have extra cashflow. We have

1 put approximately \$10,000 in improvements. I really
2 can't document it, you know, but my husband has done a
3 lot of work on it himself.

4 Q. Do you have a mortgage on the house?

5 A. Yes, I do.

6 Q. How much, please?

7 A. Sixty thousand.

8 Q. If the line were energized would you move
9 whether or not you are able to sell your house?

10 A. Yes, I think I would.

11 Q. Is your house presently for sale?

12 A. No, it isn't.

13 (Pause.)

14 A. Can I add something to that?

15 Q. Sure.

16 A. After I learned about the problems relating to
17 PAUSE and the E/MF factor several of my neighbors put
18 their houses up for sale. And I talked it over with my
19 husband and it was both of our feelings that if several
20 people in the same area or on the same street are all
21 putting their houses up for sale at the same time, people
22 aren't even going to want to come and look at your house
23 because they are going to wonder why is everyone moving
24 all at once. So we decided to wait and see what the
25 outcome of the hearings would -- whatever would come

1 about with that and then make the decision as to whether
2 we would move or not. And right now we are not
3 financially in a position where we could do that.

4 Q. Are there other houses for sale in your
5 neighborhood?

6 A. Yes.

7 Q. Do you know how long they have been for sale?

8 A. A long time. There was one on the top of our
9 street that was up for almost a good year. And I think
10 Lynn and Bill Cohen's, their house was for sale for about
11 six months or longer. And Mike Lawler's, his house has
12 been for sale almost as long.

13 Q. Do you know if they are still for sale?

14 A. I believe Lynn and Bill Cohen, they just took
15 theirs off the market because they were having no luck
16 selling it.

17 Q. Are the other two presently for sale?

18 A. Mike, I think his is still up for sale. The
19 other one, no, they took it off because they didn't have
20 anybody coming to look at it. No one was interested.

21 Q. Has the announcement affected your children at
22 this time?

23 A. Very much so.

24 Q. Can you state why, please?

25 A. Well, my children are pretty conscious of what

1 is going on around the neighborhood. They are pretty
2 involved in the environment through their school. And
3 when they found out that the powerlines were going up and
4 what the concerns were of the parents in the
5 neighborhood, they were scared. They constantly come up
6 to my husband and I saying aren't you going to move, I
7 don't want to stay here, I don't want to get cancer, I
8 don't want a brain tumor, I don't want to get leukemia.

9 What do you say to your children? Well, I can't
10 financially move right now? And they want to know why.
11 It is a little hard to get that point across to your
12 children, well, we can't financially pick up and move
13 right now. If we could we would.

14 This frightens me and also upsets me terribly
15 because I like the home, I like the neighborhood, the
16 people in it. And we all work together. I just feel
17 like we are beating our heads against the wall because no
18 one is listening to us and they don't have our concerns
19 foremost in their minds.

20 Q. You mentioned concerns. Can you state these,
21 please?

22 A. Well, my personal view of this whole issue is
23 that if the PUC is a public utility company they should
24 make a conscious decision when they take on a
25 responsibility of a powerline up to research it in a

1 fashion where they should check everything out and if
2 there is even a glimmer of a health risk for anyone,
3 children, adults, the elderly or whatever, that they
4 should listen to these issues and check them out
5 thoroughly before that, not just take it upon themselves
6 and put it up and say it's up, what are you going to do
7 about it. I feel like I'm using my hard-earned cash, and
8 everyone else, to fight against a company that should be
9 representing the people.

10 Q. Has anyone from the Philadelphia Electric
11 Company contacted you about the proposed energized line?

12 A. Never.

13 Q. Have there been any other communications to
14 explain to you what is going on?

15 A. No. Never.

16 Q. Have you ever -- have you received Philadelphia
17 Electric Company's September Energy News?

18 A. I have not received my bill yet.

19 Q. Where have you obtained information relating to
20 the potential harm that the energized powerline could
21 cause?

22 A. Well, I'm part of the organization, number one,
23 and all the literature that comes through the
24 organization I read. Also, I have seen it on television
25 and in the newspaper, magazine articles.

1 JUDGE SMOLEN: Have you ever seen any studies
2 distributed by PAUSE to the effect that with any aspect
3 concerning E/MF that there is no risk or slight risk?
4 Have any such studies been distributed to you?

5 THE WITNESS: I'm sorry. I don't understand. That
6 there is no risk?

7 JUDGE SMOLEN: Yes.

8 THE WITNESS: No, I don't believe so.

9 JUDGE SMOLEN: I am asking if you have received any
10 such studies from the organization which led to that
11 conclusion.

12 THE WITNESS: That there is no risk involved?

13 JUDGE SMOLEN: Yes.

14 THE WITNESS: No. Not to my knowledge.

15 JUDGE SMOLEN: So you have received no such
16 literature from the organization?

17 THE WITNESS: Not to my knowledge.

18 JUDGE SMOLEN: Okay. Go ahead.

19 BY MR. KAPLAN:

20 Q. Is there anything you foresee that you will be
21 able to do if the Philadelphia Electric Company energizes
22 the line in order to protect your family, other than
23 moving?

24 A. Not really. You know, you mean on a day-to-day
25 basis?

1 Q. Yes, on a living day to day basis.

2 A. From the effects of the powerline? Is that
3 what you are talking about?

4 Q. Yes.

5 A. No. I don't see anything that I could do, no.
6 I don't see any other option, is what I am trying to say,
7 than moving if it is put into effect.

8 MR. KAPLAN: I have no further questions, sir.

9 JUDGE SMOLEN: Cross-examine.

10 MR. BONNEY: No cross, Your Honor.

11 MS. KHANWALKAR: No cross, Your Honor.

12 MS. BURKET: No questions, Your Honor.

13 MS. McCLOSKEY: I have no questions, Your Honor.

14 JUDGE SMOLEN: The witness is excused. Thank you
15 very much for appearing and testifying.

16 (Witness excused.)

17 MR. KAPLAN: May it please the Court, we have no
18 further witnesses.

19 One final matter. I discussed this with opposing
20 Counsel. It is the submission to the Court of certain
21 photographs.

22 JUDGE SMOLEN: Oh, yes. They came in once before.
23 They were received and you were to make copies of them.

24 MR. KAPLAN: Yes, Your Honor.

25 JUDGE SMOLEN: Has that been done?

1 MR. KAPLAN: Yes, Your Honor.

2 JUDGE SMOLEN: Do we have sufficient copies for the
3 reporter and everyone involved?

4 MR. KAPLAN: Yes, Your Honor. The only question is
5 the copies, are as the Court indicated, color copies.

6 JUDGE SMOLEN: All right.

7 MR. KAPLAN: Would the Court want us to retain or
8 give the original photographs to the reporter?

9 JUDGE SMOLEN: It doesn't really matter if they are
10 color copies. Are the copies marked with the same
11 identification, the same exhibit numbers?

12 MR. KAPLAN: Yes, Your Honor.

13 JUDGE SMOLEN: Then you retain the originals and
14 please distribute the others.

15 MR. KAPLAN: All right. These are marked P-3, P-4,
16 P-5 and P-6.

17 JUDGE SMOLEN: I have one set. All right. This
18 was in connection with the testimony of other public
19 witnesses.

20 MR. KAPLAN: Yes, Your Honor. Exactly.

21 JUDGE SMOLEN: All right. Good.

22 MR. KAPLAN: If the Court will permit I will give
23 the reporter a copy and opposing Counsel.

24 JUDGE SMOLEN: Do you have enough for the other
25 Counsel?

1 MR. KAPLAN: Yes. Who would --

2 JUDGE SMOLEN: Well, PP&L, Staff and the OCA. So
3 you need at least three. Do you have three?

4 MR. KAPLAN: Yes, Your Honor.

5 JUDGE SMOLEN: All right. You have no further
6 witnesses, Mr. Kaplan?

7 MR. KAPLAN: No, Your Honor.

8 JUDGE SMOLEN: I think there is another matter that
9 we have to discuss, and that is Dr. Liboff. I received a
10 letter from Mr. Sugarman to the effect that Dr. Liboff
11 would not be available to testify on September 26.

12 Is that correct, Mr. Kaplan, as far as you know?

13 MR. KAPLAN: I apologize to the Court. I do not
14 know about this matter.

15 JUDGE SMOLEN: Does anyone have a copy of that
16 letter? I have it in my office.

17 MR. BONNEY: I do. Would you like to see it, Your
18 Honor?

19 JUDGE SMOLEN: Why don't you read it.

20 MR. BONNEY: "Dear Judge Smolen: We have just been
21 advised that one of our experts, Dr. Liboff, is
22 unavailable to testify on September 26, 1991. His next
23 available date would be in mid-October and based on your
24 September 9, 1991, correspondence setting additional days
25 for hearings we would appreciate your scheduling one of

1 those dates for this purpose.

2 "Thank you for your consideration."

3 JUDGE SMOLEN: That is from Mr. Sugarman.

4 MR. BONNEY: Yes.

5 JUDGE SMOLEN: Have you discussed alternative dates
6 with Mr. Sugarman and Dr. Liboff?

7 MR. KAPLAN: No, I have not, Your Honor.

8 JUDGE SMOLEN: Because at the close of yesterday's
9 hearing I discussed it with Mr. Sugarman and he said he
10 was going to talk it over with you. Apparently that
11 didn't occur.

12 MR. KAPLAN: He flew out of town at --

13 JUDGE SMOLEN: I know. He said that.

14 We have the 26th scheduled for cross-examination of
15 Liboff and Turner, is that correct?

16 MR. BONNEY: Yes, Your Honor.

17 JUDGE SMOLEN: And October 2 as the further
18 cross-examination of Turner and McCloud. Is that in
19 accordance?

20 MR. BONNEY: Your Honor, that we have not seen any
21 testimony filed by Dr. McCloud. I presume from that --
22 and I have sent several communications to Mr. Sugarman's
23 office inquiring about, and having received no response I
24 am assuming he will not be testifying in this proceeding.

25 JUDGE SMOLEN: Well, let's hear from Mr. Kaplan, if

1 he knows.

2 MR. KAPLAN: Your Honor, what I can assure the
3 Court is that I will speak to Mr. Sugarman on Monday. He
4 will be in next week.

5 JUDGE SMOLEN: That is this coming Monday?

6 MR. KAPLAN: Correct, which is the 23rd.

7 JUDGE SMOLEN: Which is the 21st -- excuse me. I
8 am looking at October. The 23rd. Correct.

9 Well, I will see him. He's going to be in
10 Harrisburg, I assume. There is a prehearing conference
11 in the PUC versus Phoenixville water rate case. I
12 believe he represents --

13 MR. BONNEY: Your Honor, just to reiterate, I will
14 just remind everyone that Mr. Sugarman indicated at the
15 hearing on the 6th of September that he would be filing
16 testimony by Dr. McCloud, prefiled written testimony, on
17 the 6th or by the latest on the 9th, as I recall.

18 JUDGE SMOLEN: Of September?

19 MR. BONNEY: Yes. And I sent him two letters since
20 that time inquiring as to the status of that and received
21 no response. So at this point I think it is only fair to
22 assume that there will be no testimony by Dr. McCloud.

23 JUDGE SMOLEN: Let's go off the record for a
24 moment.

25 (Discussion off the record.)

1 JUDGE SMOLEN: Back on the record.

2 Mr. Kaplan is directed to advise Mr. Bonney when --
3 well, we have on the record now, at least tentatively
4 that a Mr. or Dr. McCloud will not be be testifying.
5 Mr. Kaplan is directed to notify Mr. Bonney if the case
6 is otherwise, and that notice to Mr. Bonney is by Monday,
7 September 23, by telephone call.

8 MR. BONNEY: Thank you, Your Honor.

9 JUDGE SMOLEN: Is that okay with you?

10 MR. KAPLAN: Yes, sir.

11 JUDGE SMOLEN: And Mr. Bonney is nodding in the
12 affirmative.

13 Now, we are still concerned about Dr. Liboff.

14 MR. BONNEY: Just one more thing about Dr.
15 McCloud's testimony. If he is indeed going to be
16 testifying, he would request that the testimony be filed
17 on Monday.

18 JUDGE SMOLEN: Well, I am not going to rule on that
19 at this point because we have strong indications that he
20 is not going to be testifying. So if there is a problem,
21 if the decision is reversed, then you will contact me on
22 Tuesday because I will be in Harrisburg on Monday on
23 another case.

24 MR. BONNEY: Very well.

25 JUDGE SMOLEN: We still have to discuss, again,

1 Dr. Liboff. Why don't we let that go until Mr. Kaplan
2 has an opportunity to talk to Mr. Sugarman.

3 Off the record.

4 (Discussion off the record.)

5 JUDGE SMOLEN: On the record.

6 MR. BONNEY: Your Honor, it appears as though we
7 would be changing the date for Dr. Liboff's appearance
8 for cross-examination. If it is to be in mid-October as
9 Mr. Sugarman's letter requests, then we would request
10 that the date for --

11 JUDGE SMOLEN: For oral rebuttal be pushed back?

12 MR. BONNEY: Yes, Your Honor.

13 JUDGE SMOLEN: We can deal with that when we get a
14 date for Dr. Liboff. But as it stands now, September
15 26th is still on for cross-examination of Turner. Is
16 that correct?

17 MR. KAPLAN: Your Honor, --

18 JUDGE SMOLEN: You don't know. See, we have a
19 hearing scheduled and it's next week. And --

20 MR. BONNEY: Your Honor, to save hearing days and
21 travel, et cetera, we would be happy to try to cross both
22 Dr. Liboff and Mr. Turner on the same day, if that would
23 be easier for the parties.

24 JUDGE SMOLEN: Are you saying let's cancel the
25 26th?

1 MR. BONNEY: Yes.

2 JUDGE SMOLEN: What about the other Counsel? Whose
3 witness will Turner be? Protestants?

4 MR. KAPLAN: Yes, sir.

5 JUDGE SMOLEN: Apparently Turner was scheduled and
6 okayed for the 26th. If we cancel it it may disturb the
7 schedule altogether.

8 MR. BONNEY: We are happy to do it on the 26th as
9 well.

10 JUDGE SMOLEN: Why don't we do this. Mr. Kaplan is
11 going to be discussing the matter with Mr. Sugarman
12 hopefully on Monday. If the 26th is to be canceled and
13 another date set for Turner and Liboff then you can
14 notify me on Tuesday, this coming Tuesday, which will be
15 the 24th. If Turner is scheduled for the 26th, let's
16 keep the 26th. Let's move it along and we don't get
17 backed up.

18 Is that okay with everyone? Ms. McCloskey?

19 MS. McCLOSKEY: I guess we would prefer to do both
20 witnesses in one day to save some travel time and trips
21 down here.

22 JUDGE SMOLEN: Then we will be flexible.

23 Mr. Kaplan, discuss it with Mr. Bonney or Mr. Sugarman
24 will discuss it with Mr. Bonney on Monday and someone
25 will report to me on Tuesday and then we will either

1 revise the schedule or keep it as it is with respect to
2 Turner.

3 Anything further today?

4 MR. BONNEY: Yes, Your Honor.

5 JUDGE SMOLEN: Go ahead.

6 MR. BONNEY: We had filed interrogatories on the
7 Protestants with respect to the testimony of Dr. Liboff.
8 On September 12 -- I'm sorry -- on September 6, the date
9 of the last hearing. Yesterday we received objections
10 from the Protestants and a motion in response to
11 interrogatories. And I don't know whether you have
12 received that.

13 JUDGE SMOLEN: If I received it I have not seen it
14 yet because we were here yesterday.

15 MR. BONNEY: I would like to --

16 JUDGE SMOLEN: What date is on it?

17 MR. BONNEY: It is dated the 14th, but the envelope
18 that I received clearly indicates that it was mailed on
19 the 16th.

20 JUDGE SMOLEN: The 16th of September?

21 MR. BONNEY: On Monday.

22 JUDGE SMOLEN: I wasn't here on Wednesday so I
23 don't know.

24 MR. BONNEY: The certificate of service does not
25 indicate that you were sent a copy. A copy was sent to

1 Mr. Rich, apparently, but I am not sure whether one was
2 sent to you.

3 But we would like to make an oral motion to dismiss
4 the objections and compel the answers to the
5 interrogatories.

6 JUDGE SMOLEN: Again, I have not seen the motion.
7 You have made it. It is on the record.

8 MR. BONNEY: We have a copy of the motion. It is
9 only a page-and-a-half, if you would like to review it.

10 JUDGE SMOLEN: Do you have a copy of it,
11 Mr. Kaplan?

12 MR. KAPLAN: No.

13 JUDGE SMOLEN: Why don't you show it to Mr. Kaplan
14 to at least authenticate it, that it came out of his
15 office.

16 Is this an extra copy?

17 MR. BONNEY: That's an extra copy, Your Honor.

18 JUDGE SMOLEN: I don't see the questions. I have
19 the objections but in order to understand the objections,
20 I have to see what the interrogatories are.

21 MR. BONNEY: Your Honor, I have a copy of the
22 interrogatories.

23 Do you need a copy, Mr. Kaplan?

24 MR. KAPLAN: Yes.

25 May it please the Court, one brief comment.

1 Despite my willingness to respond to the Court, the last
2 thing I would be inclined to do is argue about objections
3 to interrogatories that I have never seen. I think it is
4 more appropriate for the next hearing before the Court,
5 for Mr. Bonney and Mr. Sugarman to present this issue to
6 the Court.

7 MR. BONNEY: Your Honor, I would be amenable to
8 that except for the fact that the next hearing, as I
9 understand it, is for the cross potentially of
10 Dr. Liboff.

11 JUDGE SMOLEN: Well, it is clear that Dr. Liboff
12 will not be here on the 26th.

13 MR. BONNEY: Yes.

14 JUDGE SMOLEN: That is clear. And it's not clear
15 whether we are going to have a hearing on the 26th in the
16 event that all Counsel agree that Turner be postponed
17 also. So let's hold off on argument. Mr. Kaplan is
18 obviously not in a position to argue. I have just
19 received the documents; therefore I am really not in a
20 position to rule, nor to read the 14 pages of
21 interrogatories and the objections. So let's defer that
22 until at least Tuesday when we will know more definitely
23 what the schedule will be.

24 MR. BONNEY: Very well, Your Honor. I would just
25 like to impress upon you the urgency with which we would

1 like to receive answers.

2 JUDGE SMOLEN: I understand. The witness is going
3 to testify. You want to have the background to be able
4 to cross-examine intelligently. And I think Mr. Kaplan
5 understands that as well and so does Mr. Sugarman.

6 MR. BONNEY: I would also note with respect to -- I
7 am not sure we should be prejudiced by the failure of
8 Mr. Sugarman to appear, and these objections were served
9 on the 10th day after the interrogatories were received,
10 or five days late. In other words, if we had received
11 these objections in a timely manner we would have been
12 prepared to argue them yesterday when Mr. Sugarman was
13 present. I would like to note that for the record.

14 JUDGE SMOLEN: It is spread upon the record.

15 Anything further?

16 MR. BONNEY: Yes, Your Honor.

17 I don't know if there is an issue present yet, but
18 we have also served on the Protestants interrogatories
19 and requests for production of documents with respect to
20 the testimony of Mr. Turner, who may still be testifying
21 next Thursday. We have received no objections with
22 respect to those interrogatories.

23 JUDGE SMOLEN: When were they served?

24 MR. BONNEY: On the 12th.

25 JUDGE SMOLEN: Of September?

1 MR. BONNEY: Yes. The answers are due on Monday,
2 the 23rd, and it is imperative that we receive full and
3 complete answers on Monday for us to be in a position to
4 cross Mr. Turner on Thursday. I just wanted to note that
5 for the record.

6 JUDGE SMOLEN: It is noted for the record and I
7 think Mr. Kaplan is noting it also.

8 MR. KAPLAN: Yes, Your Honor. Your Honor, these
9 interrogatories, I have not seen the ones propounded with
10 respect to Dr. Turner.

11 MR. BONNEY: I will give you a copy now.

12 MR. KAPLAN: But when you have 12 or 13 pages of
13 single spaced interrogatories, a good bit of which could
14 be answered by a single submission of a curriculum vitae
15 or a resume --

16 JUDGE SMOLEN: Do you have the testimony of
17 Dr. Turner? We have some testimony.

18 MR. BONNEY: Yes, Your Honor. We have his
19 testimony.

20 JUDGE SMOLEN: Did it contain a curriculum vitae?

21 MR. BONNEY: I don't believe that it did, Your
22 Honor. We have, however, received some information from
23 the Protestants regarding his education and experience.

24 This does not go to the background of the witness,
25 it goes specifically to his testimony. As you can see

1 from the questions, I believe each question is directed
2 to a specific part of the testimony. It is, as Your
3 Honor may know, a very complicated piece and contains a
4 number of general and broad statements. We're simply
5 trying to understand the basis for a number of those
6 statements.

7 MR. KAPLAN: May it please the Court, and I'm not
8 at all trying to be humorous, but at least beginning with
9 question number one, which is the beginning of Liboff,
10 the questions deal with his laboratory work and the dates
11 on which his medical physics doctoral program was
12 established.

13 JUDGE SMOLEN: It comes from the testimony, though.

14 MR. BONNEY: If you would like to entertain
15 argument at this point we are fully prepared to argue --

16 JUDGE SMOLEN: He's not prepared. That would be
17 unfair to Mr. Kaplan, let alone his clients. So we're not
18 going to hear argument on it. The ruling stands as it
19 was before. We are going to consider this later on. You
20 people are going to discuss it on Monday and get back to
21 me on Tuesday.

22 Having said that, I don't think there is anything
23 further that we have to discuss today so we will adjourn
24 today's hearing.

25 (Whereupon, at 11:57 a.m., the hearing was
concluded.)

C E R T I F I C A T E

1
2 I hereby certify, as the stenographic reporter,
3 that the foregoing proceedings were taken
4 stenographically by me and thereafter reduced to
5 typewriting by me or under my direction; and that this
6 transcript is a true and accurate record to the best of
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